If the latter interpretation is the one the Commission intended, it has no authority to adopt such a proposal. The agent-principal relationship is established by the principal and must be consented to by both parties.[33] In other words, only the subscriber, as the principal, can designate his or her own agent.

If the former interpretation is the one intended by the Commission (i.e., that the subscriber may designate the MDU owner or new MVPD as his or her agent), then no jurisdictional problem arises.[34] However, even under this interpretation, the Commission's proposal is problematic because it could lead to rampant authorized changes in service (i.e., "slamming"). The Commission recently highlighted the severity of slamming in the long distance business and sought comments on how to curtail this practice.[35] There is no reasonable basis for believing that as

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[33] See Johnson v. Bechtel Assocs. Professional Corp., 717 F.2d 574, 579 (D.C. Cir. 1983) ("First, there must be an indication by the principal that the agent will act on his behalf and subject to his control. And second, there must be a manifestation of consent by the agent so to act.") (citing Restatement (Second) of Agency § 1 (1958)), rev'd sub nom. on other grounds, 467 U.S. 925 (1984).

[34] This interpretation would be more in line with the Commission's statement on agency in the earlier home wiring order. See Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, 11 F.C.C.R. 4561, 4572 (1996) ("We do not intend to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf.").

[35] See Pleading Cycle Established for Comment on Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Public Notice, DA 97-1746 (rel. Aug. 15, 1997).

competition continues to mount in the MDU video business that slamming will not occur as it has with long distance. Indeed, evidence previously submitted in the record in this proceeding demonstrates that slamming has occurred in MDUs with multiple MVPDs.[36]

Accordingly, to reduce the possibility that slamming will occur, TCI urges the Commission to require that the agent of a terminating video subscriber provide the incumbent MVPD with written proof of its agency, similar to the letter of agency required in the long distance context.[37]

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[36] See, e.g., Ex Parte Letter filed by Time Warner Cable in MM Docket No. 92-260 on November 21, 1994, at 9 (describing how Liberty Cable in N.Y. would sometimes "engage in deception or strong-arm tactics to coerce reluctant tenants to terminate franchised cable television service and accept Liberty's service. Even when Liberty procures signed consent forms from tenants, Time Warner, in calling its subscribers to confirm their intentions, sometimes learns that consent forms were procured by pressure or through false or misleading statements and that tenants did not truly wish to terminate their franchised cable television service.").

[37] See 47 C.F.R. § 64.1150.

CONCLUSION

If, notwithstanding the jurisdictional deficiencies raised by TCI, the Commission nevertheless adopts the procedures set forth in the Further Notice, TCI respectfully urges the Commission to modify these procedures consistent with the specific recommendations and clarifications set forth in these comments.

Respectfully submitted,

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EXHIBIT A

APPENDIX D

Proposed Rules

Part 76 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. The authority citation for Part 76 would continue to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is proposed to be amended by revising paragraph (mm)(2) to read as follows:

§ 76.5 Demarcation Point.

* * * * *

(mm) * * *

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at or about twelve inches outside of where the cable wire enters the subscriber's dwelling unit~~, or, where the wire is physically inaccessible at such point, as close as practicable thereto so as to permit access to the cable home wiring.~~.

(rr) Default price for the home run wiring in a multiple dwelling unit building. The default price for the home run wiring in multiple dwelling unit buildings for purposes of section 76.804 shall be defined according to the following table:

TYPE OF MDU	DEFAULT PRICE
MDU with 50 units or less.	$72
MDU with 50 units or more, without molding.	$115
MDU with 50 units or more; molding required to complete the project.	$184

3. Section 76.802 is proposed to be amended by revising paragraphs (a) and (g) and by adding new paragraphs (l), (m) and (n) to read as follows:

§ 76.802 Disposition of cable home wiring.

(a) (1) Upon voluntary termination of cable service by a subscriber in a single unit dwelling, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple dwelling unit building, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, the subscriber declines, and the owner of the multiple dwelling unit building's common areas ~~(referred to herein as~~(the "MDU owner") has not previously elected to purchase or have the alternative MVPD purchase the cable home wiring when a subscriber declines, as provided in paragraph (l) hereof. If the subscriber declines to purchase the cable home wiring, and~~,~~ the MDU owner has not elected to purchase or have the alternative MVPD purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) Upon voluntary termination of cable service for an entire multiple dwelling unit building by the MDU owner, a cable operator shall not remove the cable home wiring unless it gives the MDU owner the opportunity to purchase the wiring at the replacement cost, and the MDU owner declines either to purchase the wiring or to allow the alternative MVPD to purchase the wiring. If the MDU owner declines to purchase or have the alternative MVPD purchase the cable home wiring, the cable system operator must then remove the cable home wiring no later than 30 days, under normal operating conditions, after it is notified of the MDU owner's decision, or make no subsequent attempt to remove it or to restrict its use.

(4) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

* * * * *

(g) delete the word "business" where provision refers to "seven business days."

* * * * *

(l) If a subscriber who is not the owner of the premises terminates service and declines to purchase the cable home wiring under this section, the ~~owner of the multiple dwelling unit building's common areas (referred to herein as the "MDU owner")~~ <u>MDU owner</u> may purchase it under the same terms and conditions provided in subsection (a) hereof, provided that the MDU owner notified the cable system operator of its desire to purchase the cable home wiring in the event the subscriber declines. Such notification must occur no later than the time at which the MDU owner provides the incumbent MVPD 60 days' notice of the MDU owner's intention to invoke the procedure set forth in Section 76.804(b).

(m) Where an entire multiple dwelling unit building is switching service providers, the MDU owner shall be permitted to exercise the rights of individual subscribers for purposes of the disposition of the cable home wiring under this section. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase it upon service termination under this section.

(n) This section shall apply to all multichannel video programming distributors, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. § 522(13), in the same manner as it applies to cable operators.

4. Section 76.804 is proposed to be added to read as follows:

§ 76.804 Disposition of Home Run Wiring

(a) *Building-by-building disposition of home run wiring*: (1) Where an MVPD owns the home run wiring in a multiple dwelling unit building ("MDU") and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns the common areas of the MDU ("the MDU owner"), the MDU owner may give the MVPD a minimum of 90 days' notice that its access to the entire building will be terminated. ~~The MVPD will then have 30 days~~ **Upon receiving this 90-day notice from the MDU owner, the incumbent provider shall have the option of notifying the MDU owner, within 30 days, of its belief that it has an enforceable legal right to remain on the premises and of its intention to initiate a judicial proceeding for such a determination. Until the incumbent provider's case is finally resolved, including all appeals, all further timetables and procedural requirements established by this subpart shall be stayed. If the incumbent MVPD elects not to file such a court action, such MVPD will have 30 days from the termination notice by the MDU owner** to elect, for all the home run wiring inside the MDU building: (i) to remove the wiring and restore the MDU building to its prior condition by the end of the 90-day notice period; (ii) to abandon and not disable the wiring at the end of the 90-day notice period; or (iii) to sell the wiring to the MDU ~~building~~ owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the MDU owner refuses to purchase the home run wiring, an alternative provider that has been authorized to provide service to the MDU by the MDU owner may negotiate to purchase the wiring. For purposes of this section, "home run wiring" shall refer to the wiring from the point at which the MVPD's wiring becomes devoted to an individual subscriber to the demarcation point.

(2) If the ~~parties negotiate~~ **incumbent elects to sell its home run wiring, the parties shall have 30 days from the date of such election to negotiate a price.**

(i) If a sales price is agreed upon, sale of the home run wiring/transfer of ownership shall become effective on the expiration of the 90-day notice period or upon actual service termination, whichever occurs first.

(ii) If the incumbent provider requests, in writing, a price for the home run wiring that is at or below the default price per unit for home run wiring as defined in section 76.5(rr), and both the MDU owner and the alternative provider refuse to pay this price, all of the timetables and procedures established by this subpart regarding the disposition of home run and cable home wiring shall terminate immediately, and state law shall govern the various rights of the incumbent, MDU owner, and alternative provider with respect to such wiring.

(iii) If the incumbent provider requests, in writing, a price for the home run wiring~~,~~ ~~they shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a~~ **that is above the default price per unit for home run wiring as defined in section 76.5(rr), and both the MDU owner and the alternative provider refuse to pay this** price, the incumbent must elect one of the other two options (i.e., abandonment or removal) and notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects to remove its wiring and restore the building to its prior condition, it must do so by the end of the 90-day notice period. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(b) *Unit-by-unit disposition of home run wiring*: (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, an MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The MDU owner must provide 60 days' notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. ~~The incumbent MVPD will then have 30 days~~ **Upon receiving this 60-day notice from the MDU owner, the incumbent provider shall have the option of notifying the MDU owner, within 30 days, of its belief that it has an enforceable legal right to maintain all of its home run wiring on the premises and of its intention to initiate a judicial proceeding for such a determination. Until the incumbent provider's case is finally resolved, including all appeals, all further timetables and procedural requirements established by this subpart shall be stayed. If the incumbent MVPD elects not to file such a court action, such MVPD will have 30 days from the date of notification by the MDU owner** to provide a single written election to the MDU owner and the competing MVPD(s) whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: (i) remove the wiring and restore the MDU building to its prior condition; (ii) abandon the wiring without disabling it; or (iii) sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the alternative provider may purchase it. The alternative provider(s) will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) **If the incumbent elects to sell its home run wiring, the parties shall have 30 days from the date of such election to negotiate a price.**

(i) If a sales price is agreed upon, sale of the home run wiring/transfer of ownership shall become effective seven days from the date the incumbent received the request for service termination or upon actual service termination, whichever occurs first.

(ii) If the incumbent provider requests, in writing, a price for the home run wiring that is at or below the default price per unit for home run wiring as defined in section 76.5(rr), and both the MDU owner and the alternative provider refuse to pay this price, all of the timetables and procedures established by this subpart regarding the disposition of home run and cable home wiring shall terminate immediately, and state law shall govern the various rights of the incumbent, MDU owner, and alternative provider with respect to such wiring.

(iii) If the incumbent provider requests, in writing, a price for the home run wiring that is above the default price per unit for home run wiring as defined in section 76.5(rr), and both the MDU owner and the alternative provider refuse to pay this price, the incumbent must elect one of the other two options (i.e., abandonment or removal).

(3) When an existing MVPD is notified either orally or in writing that a subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, an existing provider that has elected to remove its home run wiring will have seven days to remove its home run wiring and restore the building to its prior condition. If the existing provider has elected to abandon ~~or sell~~ the wiring, the abandonment ~~or sale~~ will become effective seven days from the date it received the request for service termination or upon actual service termination, whichever occurs first. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider by the end of the seven-day period or within 24 hours of actual service termination, whichever occurs first.

~~(3)~~**(4)** If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned and the alternative provider shall be permitted to use the home run wiring immediately to provide service. ~~The~~ **A subscriber may designate the** alternative provider or the MDU owner ~~may act as the subscriber's agent in~~ **as his or her agent for purposes of** providing notice of ~~a~~ **the** subscriber's desire to change services. **The provision of such notice to the incumbent provider by such subscriber agent shall be accompanied by written proof of agency.** If a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of our rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

~~(4)~~(5) The parties shall cooperate to ensure as seamless a transition as possible for the subscriber.

~~(5)~~(6) Section 76.802 of our rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

5. Section 76.805 is proposed to be added to read as follows:

§ 76.805 Access to Molding and Conduits

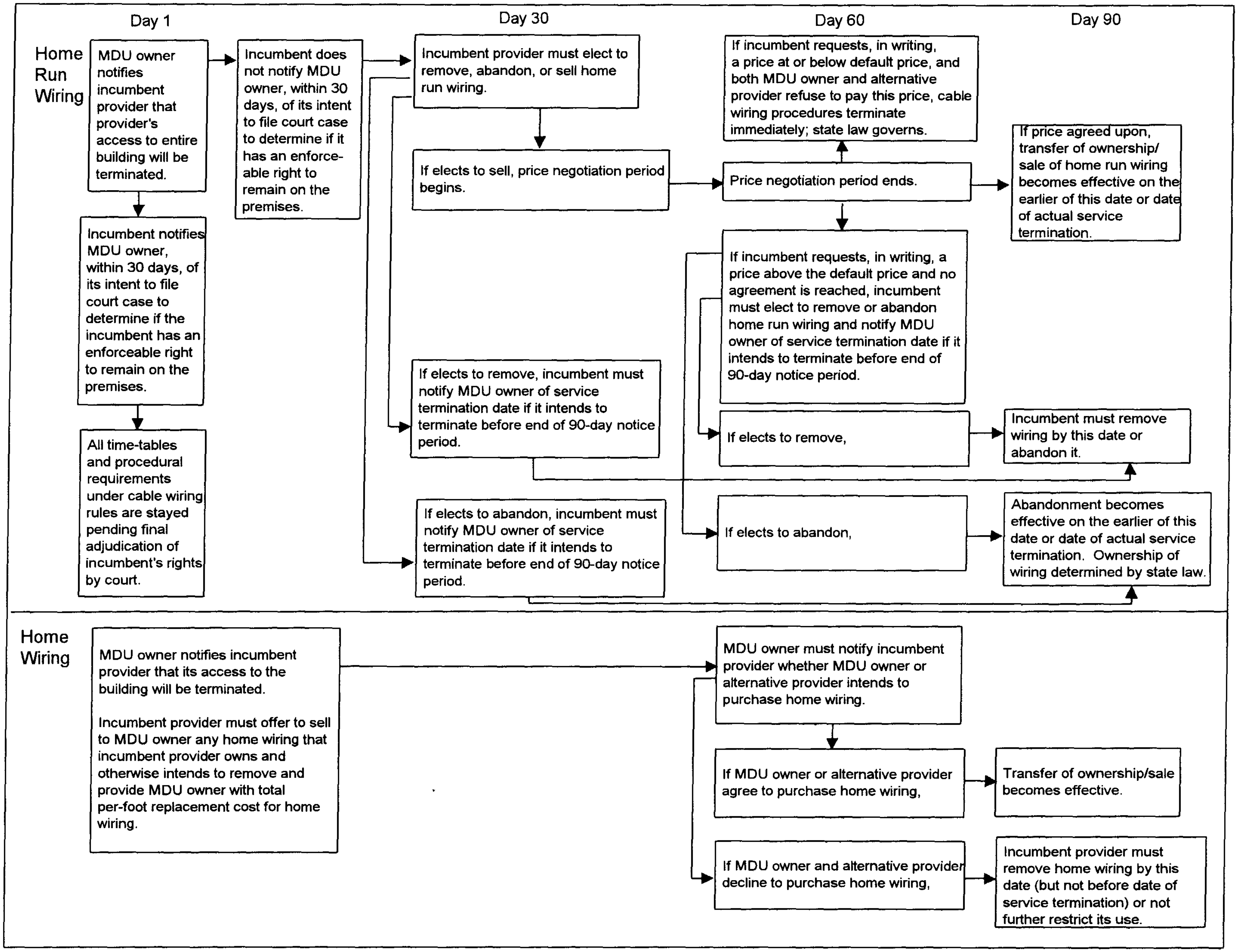
A multichannel video service provider ("MVPD") shall be permitted to install one or more home run wires in an existing molding or conduit where: (a) sufficient space is present to permit the installation; (b) the installation will not interfere with the ability of an existing MVPD to provide service; ~~and~~(c) the owner of the multiple dwelling unit building does not object to such installation**; and (d) such access is not inconsistent with an existing contract between the MDU owner and the incumbent MVPD.**

6. Section 76.801 is proposed to be amended by adding the following at the end of this section:

Nothing in this subpart shall be construed to alter the contractual, statutory, or common law rights of MVPDs or MDU owners. These rights (such as whether an existing MVPD has an enforceable legal right to remain on the premises against the will of the MDU owner) shall be governed by judicial interpretations of state law. Nothing in this subpart shall be construed to affect the riser cable in an MDU.

EXHIBIT B

BUILDING-BY-BUILDING DISPOSITION OF CABLE WIRING



UNIT-BY-UNIT DISPOSITION OF CABLE WIRING

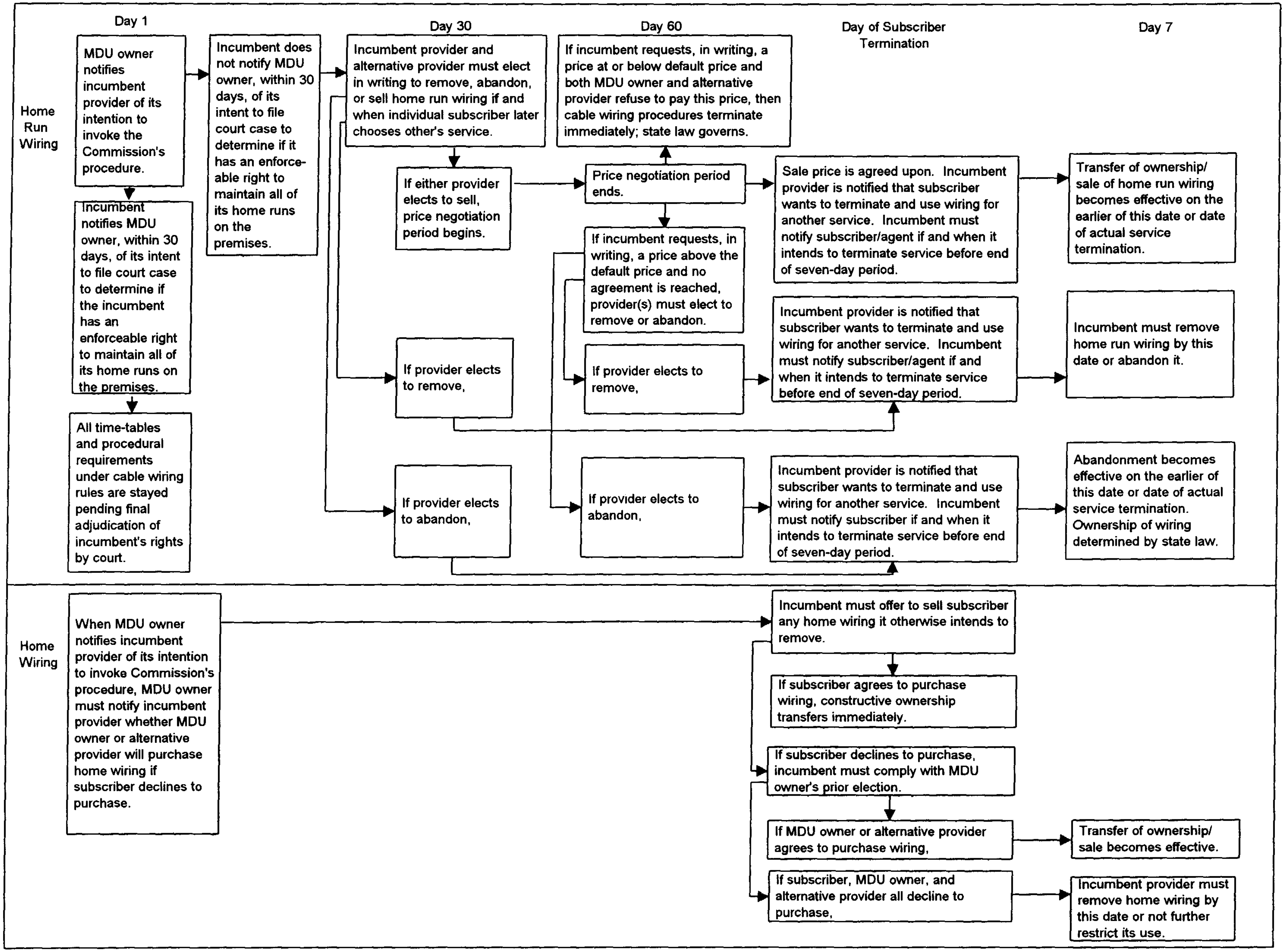


EXHIBIT C

TCI'S PROPOSED RANGE OF DEFAULT PRICES FOR MDU HOME RUN WIRING**

TYPE OF MDU	AVERAGE LABOR COST PER UNIT	AVERAGE MATERIALS COST PER UNIT	TCI'S PROPOSED DEFAULT PRICE = TOTAL AVERAGE WIRING COST PER UNIT
MDU with 50 units or less.	$40	$32	$72
MDU with 50 units or more without molding.	$40	$75	$115
MDU with 50 units or more; molding required to complete the project.	$70	$114	$184

** These default prices are based on an internal TCI analysis of the average per-unit cost, on a national basis, to install home run wiring in new MDUs under the three typical MDU design scenarios. Costs vary based on size of the MDU, labor, and location in the country. Since these costs are based on new installations, they are necessarily lower than the costs that would be incurred by a new MVPD to retrofit an existing building. This is because retrofitting involves higher labor costs to place the wiring into and behind existing structures that often have to be removed and then replaced.